

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JUAN SANCHEZ

*Plaintiff,*

*-against-*

WESLEY SMITH DALLAS, WESLEY SMITH  
DALLAS d/b/a DALLAS TRUCKING, CLINTON  
DORRIS, CLINTON DORRIS a/k/a HOMER  
CLINTON DORRIS, and CLINTON DORRIS  
d/b/a EVERY SAVINGS POSSIBLE

*Defendants.*  
-----X

08 CV 0055

AFFIRMATION  
IN SUPPORT OF  
MOTION TO REMAND

Judge Cedarbaum

Plaintiff, JUAN SANCHEZ, by his attorneys, LARRY DORMAN and  
MICHAEL S. MURPHY, moves this Court for an Order, pursuant to 28 U.S.C.A. §  
1447, remanding this action to the Supreme Court of the State of New York, Bronx  
County, and states as follows:

1. This action for personal injuries, initially filed in the Supreme Court of  
Bronx County, was removed to this court pursuant to 28 U.S.C. § 1446.

2. On December 28, 2007, defendant WESLEY SMITH DALLAS, served  
a *pro se* answer in the Bronx County action. A copy is annexed hereto as Exhibit  
“A”.

3. Also, on December 28, 2007, said defendant served a Notice of the filing  
of a Chapter 7 Bankruptcy proceeding on November 16, 2007 in the United States

Bankruptcy Court for the Middle District of Tennessee. A copy is annexed hereto as Exhibit "B".

4. The defendant's bankruptcy proceeding was presumably filed in response to his receipt of the summons and complaint sometime prior to November 16, 2007. As such, the removal was made more than 30 days after the defendant's receipt of the summons and complaint and is untimely. Pursuant to 28 U.S.C. § 1446(b), the defendant must file a notice of removal within 30 days of receipt of the summons and complaint.

5. Also, the defendant's act of filing a *pro se* answer and submitting to the jurisdiction of the Supreme Court of Bronx County is inconsistent with the consent to removal. Further, there was no substitution of counsel in the Bronx County action on the defendant's behalf by the attorneys who filed the removal petition.

6. In addition, once a debtor files for bankruptcy protection, the bankruptcy trustee stands in the shoes of the debtor and becomes the legal representative of the estate. By filing a bankruptcy proceeding, the defendant's rights in the Bronx County action became vested in the bankruptcy trustee. As such, neither the defendant nor the attorneys who filed the notice of removal on his behalf, had the authority to do so.

7. As a general rule, all defendants who have been served must join in seeking removal for removal to be proper. Still v. DeBuono, 927 F. Supp. 125, 129

(S.D.N.Y. 1996), *citing*, Branford v. Harding, 284 F.2d 307 (2<sup>nd</sup> Cir. 1960).

8. The removal statute must be strictly construed, resolving all doubts against removability. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108, 61 S.Ct. 868 (1941). Therefore, the removing defendant has the burden to show, by “unambiguous written” proof, that all the other defendants who have been served consent to removal within thirty days of receipt of the initial pleading. Allstate Ins. Co. v. Zhigun, 2004 WL 187147 (S.D.N.Y. 2004), *citing*, Payne v. Overhead Door Corp., 172 F. Supp.2d 475, 477 (S.D.N.Y. 2001). This “rule of unanimity” is a “precondition to removal.” Allstate, *supra*.

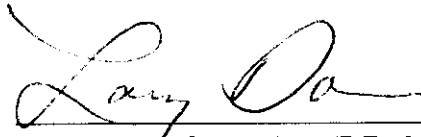
9. As there is no indication that the removal was made or consented to by the defendant and/or the bankruptcy trustee, there is no unanimity among the defendants and the case must be remanded.

10. I declare under penalty of perjury that the foregoing is true and correct.

WHEREFORE, it is respectfully requested that this action be remanded to the Supreme Court of Bronx County.

Dated: Astoria, New York  
February 4, 2008

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Larry Dorman", written over a horizontal line.

LARRY DORMAN (LD 0520)

MICHAEL S. MURPHY

*Attorneys for Plaintiff*

25-28 Broadway

Astoria, New York 11106

(718) 267-1717

TO: Charles W. Kreines, Esq.  
NEWMAN FITCH ALTHEIM MEYERS, P.C.  
*Attorneys for Defendants*  
14 Wall Street - 22<sup>nd</sup> Floor  
New York, New York 10005-2101  
(212) 619-4350  
File #: CI 16433

SUPREME COURT OF NEW YORK, BRONX COUNTY,  
STATE OF NEW YORK, COUNTY OF BRONX

JUAN SANCHEZ

EPS # 557274


Vs.

WESLEY SMITH DALLAS,  
DBA DALLAS TRUCKING, ET AL

ANSWER AND AFFIRMATIVE DEFENSE OF  
BANKRUPTCY FILED-ACTIVE WITH NOTICE  
OF "AUTOMATIC STAY" OF U.S. BANKRUPTCY CODE


Comes the defendant, Wesley Smith Dallas, "Pro Se", and files this Answer and Affirmative Defense of Bankruptcy. The bankruptcy was filed on 11/16/07 in the Middle District of Tennessee, Nashville, TN 37203. The case number is 307-08541. The sec. 341 meeting of creditors was held on December 17, 2007. A copy of the official bankruptcy notice is attached hereto. The plaintiff, JUAN SANCHEZ, has been notified and included by notice to attorney for plaintiff (Michael Murphy).

Said affirmative defense stated this 28<sup>th</sup> day of December, 2007.  
Defendant moves that matter be "DISMISSED".

  
Wesley Smith Dallas, Defendant  
"Pro Se"  
420 Richland Circle  
Gallatin, TN 37066

CERTIFICATE

I hereby certify that I have mailed an exact copy of this ANSWER-AFFIRMATIVE DEFENSE to Michael Murphy, Attorney for Plaintiff-25-28 Broadway-Astoria, New York 11106 on this 28<sup>th</sup> day of December, 2007.

  
Wesley Smith Dallas,  
Defendant

A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/07)

Case Number 3:07-bk-08541

# UNITED STATES BANKRUPTCY COURT

## Middle District of Tennessee

### Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 11/16/07.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

### See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Wesley S. Dallas  
aka Wesley Smith Dallas, fdba Dallas Trucking  
420 Richland Circle  
Gallatin, TN 37066

Case Number:  
3:07-bk-08541

Social Security/Taxpayer ID/Employer ID/Other Nos.:  
473-40-6057

Attorney for Debtor(s) (name and address):

DARRELL G. TROUTT  
127 SOUTH WATER AVENUE  
GALLATIN, TN 37066  
Telephone number: 615 452-6906

Bankruptcy Trustee (name and address):

DAVID G. ROGERS  
DAVID G ROGERS  
7003 CHADWICK DR STE 151  
BRENTWOOD, TN 37027  
Telephone number: 615 377-7722

### Meeting of Creditors

Date: December 17, 2007

Time: 01:00 PM

Location: Customs House, 701 Broadway, Room 100, Nashville, TN 37203

### Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side.

The Presumption of abuse does not arise.

### Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines:

**Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts: 2/15/08**

### Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

### Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

### Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

### Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:  
701 Broadway, Room 160, Nashville, TN 37203  
Telephone number: (615) 736-5584

For the Court:

Clerk of the Bankruptcy Court:  
Lloyd C Ray

Hours Open: Monday - Friday 8:00 A.M. - 4:00 P.M.

Date: 11/20/07

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF TENNESSEE

IN RE: Wesley S. Dallas  
FDBA Dallas Trucking  
420 Richland Cir.

Case no. 307-08541  
Ch. 7  
Judge Lundin

NOTICE-FILING OF BANKRUPTCY INCLUDING  
CREDITOR WITH PROVISION OF "AUTOMATIC  
STAY" OF BANKRUPTCY SEC. 361 AND 362

✓ TO: Michael S. Murphy, Attorney  
RE: JUAN SANCHEZ, Plaintiff  
25-28 Broadway  
Astoria, NY 11106

RE: Sanchez vs. Wesley Smith Dallas,  
DBA Dallas Trucking (Supreme Court  
New York – Bronx County)  
Amt.-\$ 20,000.00 (more or less) ? –Unsecured

TO: Meridian Company  
RE: Firestone Bridgestone Co.  
951 Hornet Dr.  
Hazelwood, M) 630421-2309  
Amt. \$1,147.78 Unsecured

Debtor hereby gives notice of the filing of Ch. 7 Bankruptcy, Case # 307-08541 on on Nov. 16, 2007 in Middle District Of Tennessee, Nashville, TN 37203. A copy of the official bankruptcy notice is attached hereto. This is a "no asset" case and notice is given to the above two (2) unsecured creditors or pending creditors. The sec. 341 meeting was held on Dec. 17, 2007 at 1:00 p.m. with deadline dates set on Feb. 15, 2008. The case still being active. As is consistent with "IN RE MADAJ"; this notice now includes the above two (2) unsecured creditors to be discharged in this bankruptcy case.

This 28<sup>th</sup> day of December, 2007

/s/ Wesley S. Dallas *Wesley S. Dallas*  
Wesley S. Dallas: Debtor

/s/ Darrell Troutt *Darrell Troutt*

Darrell Troutt, Attorney For Debtor  
127 S. Water Ave.-Gallatin, TN 37066  
PH: (615) 452-6906 FAX: 452-6906  
detroutt@bellsouth.net

CERTIFICATE

I certify that an exact copy of this Notice has been provided to US Trustee-701 Broadway-3<sup>rd</sup> Fl-Customs Bldg.-Nashville, TN 37203, David Rogers-7003 Chadwick Dr., Ste 151-Brentwood, TN 37027 (Trustee) and the above two (2) creditors added as stated herein by mail or electronically (ECF) this 28<sup>th</sup> day of December, 2008.

/s/ Darrell Troutt *Darrell Troutt*  
Darrell Troutt, Attorney

B9A (Official Form 9A) (Chapter 7 Individual or Joint Debtor No Asset Case) (12/07)

Case Number 3:07-bk-08541

# UNITED STATES BANKRUPTCY COURT

## Middle District of Tennessee

### Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on 11/16/07.

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your Rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. **NOTE:** The staff of the bankruptcy clerk's office cannot give legal advice.

### See Reverse Side For Important Explanations

Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Wesley S. Dallas  
aka Wesley Smith Dallas, fdba Dallas Trucking  
420 Richland Circle  
Gallatin, TN 37066

Case Number:  
3:07-bk-08541

Social Security/Taxpayer ID/Employer ID/Other Nos.:  
413-40-6057

Attorney for Debtor(s) (name and address):  
DARRELL G. TROUTT  
127 SOUTH WATER AVENUE  
GALLATIN, TN 37066  
Telephone number: 615 452-6906

Bankruptcy Trustee (name and address):  
DAVID G. ROGERS  
DAVID G ROGERS  
7003 CHADWICK DR STE 151  
BRENTWOOD, TN 37027  
Telephone number: 615 377-7722

### Meeting of Creditors

Date: December 17, 2007

Time: 01:00 PM

Location: Customs House, 701 Broadway, Room 100, Nashville, TN 37203

### Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on reverse side.

The Presumption of abuse does not arise.

### Deadlines:

Papers must be received by the bankruptcy clerk's office by the following deadlines:

**Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts: 2/15/08**

### Deadline to Object to Exemptions:

Thirty (30) days after the conclusion of the meeting of creditors.

### Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

### Please Do Not File a Proof of Claim Unless You Receive a Notice To Do So.

### Creditor with a Foreign Address:

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:  
701 Broadway, Room 160, Nashville, TN 37203  
Telephone number: (615) 736-5584

For the Court:  
Clerk of the Bankruptcy Court:  
Lloyd C Ray

Hours Open: Monday - Friday 8:00 A.M. - 4:00 P.M.

Date: 11/20/07